

PENNSYLVANIA - EASTERN

Rule 53.2 Arbitration - the Speedy Civil Trial

1. Certification of Arbitrators.

A. The Chief Judge shall certify as many arbitrators as the Chief Judge determines to be necessary under this rule.

B. Any individual may be certified to serve as an arbitrator if: (1) he or she has been for at least five years a member of the bar of the highest court of a state or the District of Columbia, (2) he or she is admitted to practice before this court, and (3) he or she is determined by the Chief Judge to be competent to perform the duties of an arbitrator.

C. Any member of the bar possessing the qualifications set forth in subsection B., desiring to become an arbitrator, shall complete the application form obtainable in the office of the Clerk and when completed shall file it with the Clerk of Court who shall forward it to the Chief Judge of the Court for the Chief Judge's determination as to whether the applicant should be certified.

D. Each individual certified as an arbitrator shall take the oath or affirmation prescribed by Title U.S.C. 453 before serving as an arbitrator.

E. A list of all persons certified as arbitrators shall be maintained in the office of the Clerk.

F. Any member of the Bar certified as an arbitrator may be removed from the list of certified arbitrators for cause by a majority of the judges of this court.

2. Compensation and Expenses of Arbitrators.

The arbitrators shall be compensated \$150.00 each for services in each case assigned for arbitration. Whenever the parties agree to have the arbitration conducted before a single arbitrator, the single arbitrator shall be compensated \$150.00 for services. In the event that the arbitration hearing is protracted, the court will entertain a petition for additional compensation. The fees shall be paid by or pursuant to the order of the director of the Administrative Office of the United States Courts. Arbitrators shall not be reimbursed for actual expenses incurred by them in the performance of their duties under this rule.

3. Cases Eligible for Compulsory Arbitration.

A. The Clerk of Court shall, as to all cases filed on or after September 13, 1999, designate and process for compulsory arbitration all civil cases (including adversary proceedings in bankruptcy, excluding, however, (1) social security cases, (2) cases in which a prisoner is a party, (3) cases alleging a violation of a right secured by the U.S. Constitution, and (4) actions in which jurisdiction is based in whole or in part on 28 U.S.C. §1343) wherein money damages only are being sought in an amount not in excess of \$150,000.00 exclusive of interest and costs.

All cases filed prior to September 13, 1999 which were designated by Clerk of Court for compulsory arbitration shall continue to be processed pursuant to this Rule.

B. The parties may by written stipulation agree that the Clerk of Court shall designate and process for arbitration pursuant to this rule any civil case eligible for arbitration pursuant to Section 3.A. of this local civil rule (including adversary proceedings in bankruptcy) wherein money damages only are being sought in an amount in excess of \$150,000.00, exclusive of interest and costs.

C. For purposes of this rule only, damages shall be presumed to be not in excess of \$150,000.00, exclusive of interest and costs, unless:

(1) Counsel for plaintiff, at the time of filing the complaint, or in the event of the removal of a case from state court or transfer of a case from another district to this court, within fourteen (14) days of the docketing of the case in this district filed a certification that the damages sought exceed \$150,000.00, exclusive of interest and costs; or

(2) Counsel for a defendant, at the time of filing a counterclaim or cross-claim filed a certification with the court that the damages sought by the counterclaim or cross claim exceed \$150,000.00, exclusive of interest and costs.

(3) The judge to whom the case has been assigned may "sua sponte" or upon motion filed by a party prior to the appointment of the arbitrators to hear the case pursuant to section 4(C), order the case exempted from arbitration upon a finding that the objectives of an arbitration trial (i.e., providing litigants with a speedier and less expensive alternative to the traditional courtroom trial) would not be realized because (a) the case involves complex legal issues, (b) legal issues predominate over factual issues, or (c) for other good cause.

4. Scheduling Arbitration Trial.

A. After an answer is filed in a case determined eligible for arbitration, the arbitration clerk shall send a notice to counsel setting forth the date and time for the arbitration trial. The date of the arbitration trial set forth in the notice shall be a date about one hundred twenty (120) days (one hundred fifty (150) days for cases filed prior to May 18, 1989) from the date the answer was filed. The notice shall also advise counsel that they may agree to an earlier date for the arbitration trial provided the arbitration clerk is notified within thirty (30) days of the date of the notice. The notice shall also advise counsel that they have ninety (90) days (one hundred twenty (120) days for cases filed prior to May 18, 1989) from the date the answer was filed to complete discovery unless the judge to whom the case has been assigned orders a shorter or longer period for discovery. In the event a third party has been brought into the action, this notice shall not be sent until an answer has been filed by the third party.

B. The arbitration trial shall be held before a panel of three arbitrators, one of whom shall be designated as chairperson of the panel, unless the parties agree to have the hearing before a single arbitrator. The arbitration panel shall be chosen through a random selection process by the

clerk of the court from among the lawyers who have been certified as arbitrators. The arbitration clerk shall endeavor to assure insofar as reasonably practicable that each panel of three arbitrators shall consist of one arbitrator whose practice is primarily representing plaintiffs, one whose practice is primarily representing defendants, and a third panel member whose practice does not fit either category. The arbitration panel shall be scheduled to hear not more than four (4) cases on a date or dates several months in advance.

C. The judge to whom the case has been assigned shall at least thirty (30) days prior to the date scheduled for the arbitration trial sign an order setting forth the date and time of the arbitration trial and the names of the arbitrators designated to hear the case. In the event that a party has filed a motion to dismiss the complaint, a motion for summary judgment, a motion for judgment on the pleadings, or a motion to join necessary parties, the judge shall not sign the order until the court has ruled on the motion, but the filing of such a motion on or after the date of said order shall not stay the arbitration unless the judge so orders.

D. Upon entry of the order designating the arbitrators, the arbitration clerk shall send to each arbitrator a copy of all the pleadings, including the order designating the arbitrators, and the guidelines for arbitrators.

E. Persons selected to be arbitrators shall be disqualified for bias or prejudice as provided in Title 28, U.S.C. 144, and shall disqualify themselves in any action in which they would be required under Title 28, U.S.C. 455 to disqualify themselves if they were a justice, judge or magistrate.

F. The arbitrators designated to hear the case shall not discuss settlement with the parties or their counsel, or participate in any settlement discussions concerning the case which has been assigned to them.

5. The Arbitration Trial.

A. The trial before the arbitrators shall take place on the date and at the time set forth in the order of the Court. The trial shall take place in the United States Courthouse in a room assigned by the arbitration clerk. The arbitrators are authorized to change the date and time of the trial provided the trial is commenced within thirty (30) days of the trial date set forth in the Court's order. Any continuance beyond this thirty (30) day period must be approved by the judge to whom the case has been assigned. The arbitration clerk must be notified immediately of any continuance.

B. Counsel for the parties shall report settlement of the case to the arbitration clerk and all members of the arbitration panel assigned to the case.

C. The trial before the arbitrators may proceed in the absence of any party who, after notice, fails to be present. In the event, however, that a party fails to participate in the trial in a meaningful manner, the Court may impose appropriate sanctions, including, but not limited to the striking of any demand for a trial de novo filed by that party.

D. Rule 45 of the Federal Rules of Civil Procedure shall apply to subpoenas for attendance of

witnesses and the production of documentary evidence at the trial before the arbitrators. Testimony at the trial shall be under oath or affirmation.

E. The Federal Rules of Evidence shall be used as guides to the admissibility of evidence. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least fourteen (14) days prior to the trial and the arbitrators shall receive such exhibits into evidence without formal proof unless counsel has been notified at least seven (7) days prior to the trial that the adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrators may refuse to receive into evidence any exhibit, a copy or photograph of which has not been delivered prior to trial to the adverse party, as provided herein.

F. A party may have a recording and transcript made of the arbitration hearing at the party's expense.

6. Arbitration Award and Judgment.

The arbitration award shall be filed with the court promptly after the trial is concluded and shall be entered as the judgment of the court after the thirty (30) day time period for requesting a trial de novo has expired, unless a party has demanded a trial de novo, as hereinafter provided. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the court in a civil action, except that it shall not be the subject of appeal. In a case involving multiple claims and parties, any segregable part of an arbitration award concerning which a trial de novo has not been demanded by the aggrieved party before the expiration of the thirty (30) day time period provided for filing a demand for trial de novo shall become part of the final judgment with the same force and effect as a judgment of the court in a civil action, except that it shall not be the subject of appeal.

7. Trial De Novo.

A. Within thirty (30) days after the arbitration award is entered on the docket, any party may demand a trial de novo in the district court. Written notification of such a demand shall be served by the moving party upon all counsel of record or other parties. Withdrawal of a demand for a trial de novo shall not reinstate the arbitrators' award and the case shall proceed as if it had not been arbitrated.

B. Upon demand for a trial de novo, the action shall be placed on the trial calendar of the Court and treated for all purposes as if it had not been referred to arbitration. In the event it appears to the judge to whom the case was assigned that the case will not be reached for trial de novo within ninety (90) days of the filing of the demand for trial de novo, the judge shall request the Chief Judge to reassign the case to a judge whose trial calendar will make it possible for the case to be tried de novo within ninety (90) days of the filing of the demand for trial de novo. Any right of trial by jury which a party would otherwise have shall be preserved inviolate.

C. At the trial de novo, the court shall not admit evidence that there had been an arbitration trial, the nature or amount of the award, or any other matter concerning the conduct of the arbitration

proceeding unless the evidence would otherwise be admissible in the Court under the Federal Rules of Evidence.

D. To make certain that the arbitrators' award is not considered by the Court or jury either before, during or after the trial *de novo*, the arbitration clerk shall, upon the filing of the arbitration award, enter onto the docket only the date and "arbitration award filed" and nothing more, and shall retain the arbitrators' award in a separate file in the Clerk's office. In the event no demand for trial *de novo* is filed within the designated time period, the arbitration clerk shall enter the award on the docket and place it in the case file.

Rule 53.3. Alternative Dispute Resolution

1. Litigants in all civil actions, exempting only social security appeals, pro se prisoner civil rights actions, and petitions for habeas corpus, shall be required to consider the use of an alternative dispute resolution process (the "ADR process") at an appropriate stage in the litigation.

2. ADR processes may include mediation and settlement conferences and such other ADR processes as the judge to whom the case is assigned (the "assigned judge") may designate.

3. All ADR processes subject to this Rule shall be confidential, and disclosure by any person of confidential dispute resolution communications is prohibited unless confidentiality has been waived by all participants in the ADR process, or disclosure is ordered by the assigned judge for good cause shown.

4. Nothing in the Rule shall be construed to limit the assigned judge from (a) conducting settlement conferences or referring a matter to a magistrate judge for a settlement conference, or (b) ordering the litigants to participate in an ADR process, or (c) approving or disapproving of an ADR process selected by the litigants.

5. The Alternative Dispute Resolution ("ADR") Committee of the court shall administer, oversee, and evaluate the court's ADR program in accordance with the Alternative Dispute Resolution Act of 1998. The Clerk of Court, or such other person as may be designated from time to time by the Chief Judge, shall serve as the ADR coordinator. Under the direction of the ADR committee, the coordinator shall administer a program for recruitment, screening and training of attorneys to serve as neutrals.

6. The Rule is intended to be flexible so as to permit the court to adopt, from time to time, guidelines and policies for the administration of the ADR program. The procedures promulgated by the court for the implementation of the ADR program shall be maintained on file in the office of the Clerk.

7. Nothing in the Rule shall be construed to amend or modify the provisions of Local Civil Rule 53.2 (compulsory and voluntary arbitration with right of trial *de novo*). Local Civil Rule 53.2.1 (compulsory mediation) is repealed by separate order.